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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,421	03/20/2001	David Weiss	2420-0034	9918
22204	7590	12/08/2005	EXAMINER	
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/811,421	WEISS ET AL.	
	Examiner	Art Unit	
	James N. Smalley	3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-30 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17, 21 and 33 is/are allowed.
- 6) ☒ Claim(s) 15, 16, 18-20, 22-26, 28-30, 32 and 34 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 3727

## DETAILED ACTION

### *Response to Amendment*

1. Due to the new grounds of rejection presented herein, the outstanding final action is withdrawn and new final rejection is hereby presented.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 15, 16, 18-20, 22, 29-30, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt US 5,538,154 in view of Bingisser US 5,103,993.

Von Holdt '154 teaches, in the embodiment of figures 9-10, a lid having openings (76) on the transition wall which will inherently provide visual indication of the location of the cup brim, and which are equally spaced about the periphery of the cover, an outer wall (14c) and a closure surface (12c). Examiner notes the inner surface outer wall (14c) in figure 10 will cylindrically circumscribe the container rim.

Regarding claim 15, 19, and 29, as they are best understood, Von Holdt does not teach the access opening in the closure surface. Bingisser, as seen in fig. 4 and col. 3 lines 19-21, teaches a similar container with an access pod (16) in the closure surface. The openings of Von Holdt are in each of the four quadrants and mutually spaced.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure portion of Von Holdt, providing the access pod (16) taught by Bingisser '993, motivated by the benefit of providing access to the container contents without having to remove the container lid.

Art Unit: 3727

4. Claims 23-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt US 5,538,154 in view of Bingisser US 5,103,993 and further in view of Yun US 5,427,266.

Regarding claim 23, the modified lid of Von Holdt does not teach the closure surface extending from a lowest point on the inner wall, instead teaching an unlabeled sealing flange extending beyond the intersection of these two elements.

Yun '266 teaches a container lid whereby a closure surface extends from the lowest point of a container inner wall, and further teaches inner sealing lip (24). Thus, the references teaches a seal formed at the same location as that of Von Holdt '154, i.e. the intersection between the closure surface and the inner wall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Von Holdt '154, forming the closure surface (12c) to extend from the lowest point of the inner wall, as taught by Yun '266, because such is a mechanical expedient sealing means drawn to solving the same problem, i.e. sealing the container interior.

Regarding claim 26, see Von Holdt '154 figure 2, whereby cutouts (26) provide visual access to the cup brim.

#### ***Allowable Subject Matter***

5. Claims 17, 21, and 33 are allowed.

6. Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

7. Applicant's arguments filed 09 November 2005 regarding rejections over Von Holdt '154 in view of Bissinger '993, and rejections further in view of Yun '266 have been fully considered but they are not persuasive.

Art Unit: 3727

**a) Applicant argues Von Holdt '154 does not teach openings in the transition wall.**

Examiner notes openings (76) in figures 9-10 are in fact formed in the transition wall.

**b) Applicant argues Von Holdt '154 does not teach the inner surface of the outer wall cylindrically circumscribing the cup brim.**

Examiner notes the inner surface of outer wall (14c) in figure 10 will cylindrically circumscribe the cup brim.

8. Applicant's arguments, see Request for Reconsideration, filed 09 November 2005, with respect to rejections over Fulton '756 in view of Obey '498 have been fully considered and are persuasive. The rejection of the claims over this combination has been withdrawn.

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER